

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re METAWAVE COMMUNICATIONS
CORP. SECURITIES LITIGATION

Master File No. C02-625RSM

CLASS ACTION

This Document Relates To:

ALL ACTIONS.

ORDER PRELIMINARILY APPROVING
SETTLEMENT AND PROVIDING FOR
NOTICE

ORDER PRELIMINARILY APPROVING
SETTLEMENT AND PROVIDING FOR NOTICE
(C02-625RSM)

Coughlin Stoia Geller Rudman & Robbins LLP
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058 • Fax: 619/231-7423

1 WHEREAS, a consolidated action is pending before this Court styled *In re Metawave*
2 *Communications Corp. Securities Litigation*, Master File No. C02-625RSM (the “Litigation”);

3 WHEREAS, the parties having made application, pursuant to Federal Rule of Civil
4 Procedure 23(e), for an order approving the settlement of this Litigation, in accordance with a
5 Stipulation of Settlement dated as of October 26, 2009 (the “Stipulation”), which, together with the
6 exhibits annexed thereto, set forth the terms and conditions for a proposed settlement of the
7 Litigation and for dismissal of the Litigation with prejudice upon the terms and conditions set forth
8 therein; and the Court having read and considered the Stipulation and the exhibits annexed thereto;
9 and

10 WHEREAS, all defined terms herein have the same meanings as set forth in the Stipulation.

11 NOW, THEREFORE, IT IS HEREBY ORDERED:

12 1. The Court does hereby preliminarily approve the Stipulation and the settlement set
13 forth therein, subject to further consideration at the Final Approval Hearing described below.

14 2. A hearing (the “Final Approval Hearing”) shall be held before this Court on February
15 11, 2010, at 1:30 p.m., at the United States District Court for the Western District of Washington at
16 Seattle, United States Courthouse, 700 Stewart Street, Seattle, WA 98101 to determine whether the
17 proposed settlement of the Litigation on the terms and conditions provided for in the Stipulation is
18 fair, reasonable, and adequate to the Class and should be approved by the Court; whether a Judgment
19 as provided in ¶1.10 of the Stipulation should be entered; whether the proposed Plan of Allocation
20 should be approved; and to determine the amount of fees and expenses that should be awarded to
21 Lead Counsel and to Lead Plaintiffs for their expenses.

22 3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court certifies for
23 purposes of settlement a Class defined as all Persons who purchased Metawave common stock
24 between April 24, 2001 and March 14, 2002, inclusive. Excluded from the Class are Defendants,
25 members of the families of Defendants, any current or former parent, subsidiary, affiliate, partner,
26 officer, executive or director of any Defendant or Metawave, any entity in which any such excluded

1 party has a controlling interest and the legal representatives, affiliates, heirs, successors, or assigns of
2 any such excluded Person. Also excluded from the Class are those Persons who timely and validly
3 request exclusion from the Class pursuant to the Notice of Proposed Settlement of Class Action.

4 4. The Court finds that the prerequisites for a class action under Rule 23(a) and (b)(3) of
5 the Federal Rules of Civil Procedure have been satisfied in that: (a) the members of the Class are so
6 numerous that joinder of all Class Members in the class action is impracticable; (b) there are
7 questions of law and fact common to the Class that predominate over any individual question; (c) the
8 claims of the Lead Plaintiffs are typical of the claims of the Class; (d) Lead Plaintiffs and their
9 counsel have fairly and adequately represented and protected the interests of Class Members; and (e)
10 a class action is superior to other available methods for the fair and efficient adjudication of the
11 controversy.

12 5. Pursuant to Rule 53(c) of the Federal Rules of Civil Procedure, the Court appoints the
13 firm of Gilardi & Co. LLC, 3301 Kerner Boulevard, San Rafael, CA 94901 (“Claims
14 Administrator”) to supervise and administer the notice procedure as well as the processing of claims
15 as more fully set forth below:

16 (a) Not later than December 1, 2009 (the “Notice Date”), the Claims
17 Administrator shall cause a copy of the Notice and the Proof of Claim and Release form,
18 substantially in the forms annexed as Exhibits A-1 and A-2 hereto, to be mailed by first class mail to
19 all Class Members who can be identified with reasonable effort and to be posted on its website at
20 www.gilardi.com;

21 (b) Not later than December 1, 2009, the Claims Administrator shall cause the
22 Summary Notice to be published once in the national edition of *Investor’s Business Daily*; and

23 (c) Not later than December 4, 2009, Lead Counsel shall serve on Defendants’
24 counsel and file with the Court proof, by affidavit or declaration, of such mailing and publishing.

25 6. Nominees who purchased Metawave common stock for the benefit of another Person
26 during the period April 24, 2001 to March 14, 2002, inclusive, shall be requested to send the Notice

1 and Proof of Claim and Release form to all such beneficial owners of Metawave common stock
2 within ten (10) days after receipt thereof, or send a list of the names and addresses of such beneficial
3 owners to the Claims Administrator within ten (10) days of receipt thereof, in which event the
4 Claims Administrator shall promptly mail the Notice and Proof of Claim and Release form to such
5 beneficial owners.

6 7. All fees, costs, and expenses incurred in identifying and notifying members of the
7 Class shall be paid from the Settlement Fund and in no event shall Defendants or Metawave bear any
8 responsibility for such fees, costs, or expenses.

9 8. All members of the Class shall be bound by all determinations and judgments in the
10 Litigation concerning the settlement, whether favorable or unfavorable to the Class.

11 9. Class Members who wish to participate in the settlement shall complete and submit
12 the Proof of Claim and Release forms in accordance with the instructions contained therein. Unless
13 the Court orders otherwise, all Proof of Claim and Release forms must be submitted no later than
14 ninety (90) days from the Notice Date. Any Class Member who does not timely submit a Proof of
15 Claim and Release form within the time provided shall be barred from sharing in the distribution of
16 the proceeds of the Net Settlement Fund, unless otherwise ordered by the Court, but shall
17 nevertheless be bound by any final judgment entered by the Court. Notwithstanding the foregoing,
18 Lead Counsel shall have the discretion to accept late-submitted claims for processing by the Claims
19 Administrator so long as distribution of the Net Settlement Fund is not materially delayed.

20 10. Any member of the Class may enter an appearance in the Litigation, at his, her, or its
21 own expense, individually or through counsel of their own choice. If they do not enter an
22 appearance, they will be represented by Lead Counsel.

23 11. Any Person falling within the definition of the Class may, upon request, be excluded
24 or "opt out" from the Class. Any such Person must submit to the Claims Administrator a request for
25 exclusion ("Request for Exclusion"), postmarked no later than December 31, 2009. A Request for
26 Exclusion must be signed and state: (a) the name, address, and telephone number of the Person

1 requesting exclusion; (b) the Person's purchases of Metawave common stock during the Class
2 Period, including the dates, the number of shares of Metawave common stock purchased, and price
3 paid for each such purchase; and (c) that the Person wishes to be excluded from the Class. All
4 Persons who submit valid Requests for Exclusion in the manner set forth in this paragraph shall have
5 no rights under the Stipulation, shall not share in the distribution of the Net Settlement Fund, and
6 shall not be bound by the Stipulation or any final judgment.

7 12. Lead Counsel shall cause to be provided to Defendants' counsel copies of all
8 Requests for Exclusion, and any written revocation of Requests for Exclusion, as expeditiously as
9 possible and in any event within seven (7) days prior to the Final Approval Hearing.

10 13. Any member of the Class may appear and show cause, if he, she, or it has any reason
11 why the proposed settlement of the Litigation should not be approved as fair, reasonable and
12 adequate, or why a judgment should not be entered thereon, why the Plan of Allocation should not
13 be approved, why attorneys' fees and expenses should not be awarded to counsel for the Lead
14 Plaintiffs or why Lead Plaintiff should not be awarded their expenses; provided, however, that no
15 Class Member or any other Person shall be heard or entitled to contest the approval of the terms and
16 conditions of the proposed settlement, or, if approved, the Judgment to be entered thereon approving
17 the same, or the order approving the Plan of Allocation, or any attorneys' fees and expenses to be
18 awarded to counsel for Lead Plaintiffs, unless written objections and copies of any papers and briefs
19 are received by Jeffrey D. Light, Coughlin Stoia Geller Rudman & Robbins LLP, 655 West
20 Broadway, Suite 1900, San Diego, CA 92101, Ronald L. Berenstein, Perkins Coie LLP, 1201 Third
21 Avenue, Suite 4800, Seattle, WA 98101, and David Bayless, Covington & Burling LLP, One Front
22 Street, San Francisco, CA 94111, on or before January 15, 2010; and said objections, papers and
23 briefs are filed with the Clerk of the United States District Court for the Western District of
24 Washington at Seattle, on or before January 15, 2010. Any member of the Class who does not make
25 his, her or its objection in the manner provided shall be deemed to have waived such objection and
26 shall forever be foreclosed from making any objection to the fairness, reasonableness or adequacy of

1 the proposed settlement as incorporated in the Stipulation, to the Plan of Allocation, and to the award
2 of attorneys' fees and expenses to Lead Counsel and the payment of expenses to Lead Plaintiffs,
3 unless otherwise ordered by the Court.

4 14. All funds held by the Escrow Agent(s) shall be deemed and considered to be in
5 *custodia legis*, and shall remain subject to the jurisdiction of the Court, until such time as such funds
6 shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

7 15. All papers in support of the settlement, Plan of Allocation and any application by
8 counsel for Lead Plaintiffs for attorneys' fees and expenses shall be filed and served no later than
9 fourteen (14) calendar days prior to the objection deadline in ¶13 and any reply papers shall be filed
10 and served seven (7) calendar days prior to the Final Approval Hearing.

11 16. Neither Defendants nor Metawave nor their Related Parties shall have any
12 responsibility for the Plan of Allocation or any application for attorneys' fees or expenses submitted
13 by Lead Plaintiffs and Lead Counsel, and such matters will be considered separately from the
14 fairness, reasonableness, and adequacy of the settlement.

15 17. At or after the Final Approval Hearing, the Court shall determine whether the Plan of
16 Allocation proposed by Lead Counsel, and any application for attorneys' fees and expenses,
17 including the expenses of Lead Plaintiffs should be approved.

18 18. All reasonable expenses incurred in identifying and notifying Class Members as well
19 as administering the Settlement Fund shall be paid as set forth in the Stipulation. In the event the
20 Court does not approve the settlement, or it otherwise fails to become effective, neither Lead
21 Plaintiffs nor any of their counsel shall have any obligation to repay any amounts actually and
22 properly incurred or disbursed pursuant to ¶2.6 or ¶2.7 of the Stipulation.

23 19. Neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations
24 or proceedings connected with it, shall be construed as an admission or concession by Defendants or
25 Metawave of the truth of any of the allegations in the Litigation, or of any liability, fault, or
26 wrongdoing of any kind.

1 HAGENS BERMAN SOBOL SHAPIRO LLP

2 STEVE W. BERMAN, WSBA #12356

1301 Fifth Avenue, Suite 2900

3 Seattle, WA 98101

Telephone: 206/623-7292

4 206/623-0594 (fax)

5 KIRBY McINERNEY LLP

IRA M. PRESS

6 825 Third Avenue, 16th Floor

New York, NY 10022

7 Telephone: 212/317-2300

212/751-2540 (fax)

8 Co-Lead Counsel for Plaintiffs

9 C:\DOCUME~1\AdrianaD\LOCALS~1\Temp\7\MetaSave\ (v2) EA-00060239.doc